

AMENDING THE COMMUNICATIONS ACT OF 1934 WITH RESPECT TO THE ISSUANCE OF LICENSES TO NON- CITIZENS FOR RADIO STATIONS ON AIRCRAFT

AUGUST 12, 1958.—Ordered to be printed

Mr. MONRONEY, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 8543]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 8543) to amend the Communications Act of 1934 to authorize, in certain cases, the issuance of licenses to non-citizens for radio stations on aircraft and for the operation thereof, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

GENERAL STATEMENT

The purpose of this legislation is to give the Federal Communications Commission discretionary authority to issue licenses to non-citizens for the operation of aircraft radio stations in the case of persons holding United States pilot certificates or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

Under the existing provisions of the Federal Communications Act, the Commission is prohibited from issuing radio operator licenses to persons who are not citizens of the United States. On the other hand, such persons are not, by reason of their lack of citizenship, barred from obtaining authorization to operate aircraft in this country. The Civil Aeronautics Administration is authorized and does presently issue pilot certificates to nationals of friendly foreign countries. The result has been that some persons have been authorized to operate aircraft in the United States and at the same time have been denied authority to use the radio, an important safety feature which is of value not only to the alien pilot himself but to other aircraft pilots

and passengers whose safety is jeopardized because the alien pilot may not operate his aircraft radio under any circumstances.

This legislation would remedy the situation by giving the Federal Communications Commission, if it finds the public interest will be served thereby, discretionary authority to waive the requirement of citizenship in cases of persons holding United States pilot certificates or in the case of persons holding foreign aircraft-pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

This bill also amends section 310 (a) of the Federal Communications Act. In addition to providing for the licensing of radio operators, the act has a separate requirement for the licensing of radio stations. Section 310 (a) as it now stands provides that a radio station license shall not be granted to an alien or the representative of an alien. Radio equipment installed on aircraft comes with the classification of a radio station, and radio equipment installed on United States-registered aircraft is licensed by the Federal Communications Commission.

These licenses are only issued to the person who is in possession and control of the radio equipment. Thus, in the case of a United States-registered aircraft which is being operated by aliens under a lease or other legal arrangement, the registered owner cannot secure a radio station license because he is not in control and possession of the radio equipment.

The operator is unable to obtain a radio station license because of the requirement of citizenship. Furthermore, the operator would probably not be able to obtain a station license from his country of nationality as the Chicago convention, to which the United States and many other nations are parties, requires that a license to install and operate radio equipment shall be issued by the State in which the aircraft is registered.

The amendment to section 310 (a) would remove the requirement of citizenship and allow aliens in control of United States-registered aircraft to have radio equipment installed in the aircraft by authorizing Federal Communications Commission to issue radio station licenses in these cases.

This legislation would relieve the Congress of the necessity of private bills with which it had been burdened in the past whenever a waiver from the licensing provisions of the Communications Act has been requested by alien pilots.

AMENDMENTS

On page 1, line 8, strike the words "and that security provisions have been satisfied". On page 1, line 10, and on continuing on page 2, line 1, strike the words "issued by the Civil Aeronautics Administration," and on page 2, line 12, strike the words "issued by the Civil Aeronautics Administration".

The Federal Communications Commission, in its testimony before the House committee, recommended the enactment of the bill as introduced in the House. However, the House committee added the above-quoted language which has the effect of placing upon the Federal Communications Commission the primary responsibility for determining that security considerations have been satisfied before the issuance of a radio station operator's license to an alien pilot.

This caused the Commission to recommend the deletion of this language because of the need of the Commission to augment its staff to process the necessary security clearances.

The Commission stated further that since an alien pilot must first obtain authorization from the Civil Aeronautics Administration to operate his aircraft before he may apply for a radio operator's license, it would seem clear that the security investigation should take place prior to the issuance of the pilot's license and not be postponed until an application for a radio operator's license is filed with the Commission. If a security determination were to be made by the Civil Aeronautics Administration, this would eliminate the necessity of an additional security investigation on the part of the Federal Communications Commission which, in effect, would merely duplicate CAA's effort.

It is noted that, under the provisions of the existing Civil Aeronautics Act of 1938, as amended, there is no security program in effect with respect to the issuance of alien pilots' certificates because the security provisions of that act (secs. 1201-1202) require the issuance of an Executive order by the President directing the Civil Aeronautics Board to take into consideration national-security factors in the exercise of its licensing authority. To date the President has not issued such an Executive order.

This lack of direct authority is now being remedied by the Congress in the legislation to create a Federal Aviation Agency (S. 3880) which provides in section 601 (2) (6) that the Administrator may take into consideration "national security" as well as "safety in air commerce" in the promulgation of rules and regulations governing the issuance of licenses. Your committee feels that adequate statutory authority will thus be available to the Administrator to establish appropriate security-screening procedures in the issuance of airmen certificates to alien pilots.

Since the authority to issue pilot certificates, now exercised by the Civil Aeronautics Administration, is being transferred by the Federal Aviation Act of 1958 to the new Federal Aviation Agency, the committee amendments also delete specific reference to the Civil Aeronautics Administration. This makes no substantive change whatever, since only one agency is authorized to issue pilot certificates.

As a further consideration, your committee also desires to point out that under the Immigration and Nationality Act of 1952 (66 Stat. 163) all persons entering the United States for permanent residence or for temporary residence (with the exception of certain Government officials) must meet the stringent security provisions set forth therein. Thus, in most cases, the possession of a visa indicates that the alien has received a security screening. The records of the State Department would, of course, be available to the Administrator of the Federal Aviation Agency in connection with the discharge of his duty under the Federal Aviation Act.

Under the provisions of the Federal Communications Act of 1934, as amended, the Federal Communications Commission is required to find, with regard to every license issued by it, that the public interest will be served thereby. In making this finding, the Commission necessarily must weigh the character qualifications of persons seeking radio operator licenses. The committee desires to emphasize that this bill, as amended, does not relieve the Commission of this affirmative responsibility.

AGENCY COMMENTS

The comments of the Civil Aeronautics Board, Comptroller General of the United States, Federal Communications Commission, Department of Justice and the Department of State, are set forth below.

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION ON
H. R. 8543

H. R. 8543 would amend sections 303 (1) and 310 (a) (1) of the Communications Act of 1934.

The proposed amendment to section 303 (1) would authorize the Commission to issue licenses to noncitizens for the operation of aircraft radio stations in the case of persons holding United States pilot certificates issued by the Civil Aeronautics Administration or persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments. The proposed amendment to section 310 (a) (1) would authorize the Commission to issue station licenses to noncitizens under the same circumstances.

There appears to be substantial need in the area of air safety for legislation of this nature because of the present difference in statutory standards applied by the Civil Aeronautics Administration in issuing pilot certificates, and the Federal Communications Commission in issuing station licenses for aircraft and aircraft radio operator licenses. The CAA is authorized and does issue pilot certificates to the nationals of any friendly foreign country but the Commission is now prohibited from issuing radio operator or station licenses to the same individuals. The result has been that some persons who are authorized to operate aircraft in the United States are at the same time denied an important safety feature, which is of value not only to the alien pilot himself but to other air and ground personnel with whom he could otherwise be in contact.

H. R. 8543 is calculated to enhance air safety in the United States and in its original form was endorsed by the Commission.

Your attention, however, is called to the language added to the original bill by the House committee, page 1, lines 8 and 9, whereby section one is made to read, in pertinent part, as follows (the language added is italicized):

"* * * in issuing licenses for the operation of radio stations on aircraft the Commission may, if it finds that the public interest will be served thereby and *that security considerations have been satisfied*, waive the requirement of citizenship in the case of persons holding United States pilot certificates issued by the Civil Aeronautics Administration, or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments."

The apparent effect of this amendment is to require the Commission to make an independent affirmative finding with regard to security considerations before issuing a license to an alien for operation of an aircraft radio station.

In our comments to the House Committee, we treated as follows upon the security problem:

"* * * the Commission feels that if the CAA has satisfied itself as to the security problem of the individual applying for a pilot certificate and subsequently issues such an individual a pilot certificate the Commission may then issue a station license or an operator's license to that pilot. Similarly, when the State Department negotiates reciprocal agreements with foreign governments, any security problems can be disposed of as part of the negotiation, and the Commission can properly issue operator or station licenses under the authority of the agreement."

This statement was intended to be construed in light of the Communications Act of 1934, as amended, which requires the Commission to find, with regard to every license issued by it, that the public interest will be served thereby. The Commission has previously interpreted public interest as encompassing authority to examine the character qualifications of persons seeking radio operators licenses and, where information is brought to our attention which might show that the issuance of such license would jeopardize the security of the United States, as authorizing this agency to refuse to issue such license. The language proposed in this bill, without the language italicized, is consistent with this view. However, the italicized language, by requiring an affirmative finding that security consideration have been satisfied, would appear to place upon the Commission a responsibility to require a complete investigation of every applicants' background preliminary to such finding.

In our opinion, the italicized language would make it necessary for the Commission to augment its staff to process the necessary security clearances. We should not wish to subordinate security considerations to administrative problems. In this instance, however, the alien pilot is required to obtain authorization from another agency of the Federal Government to pilot his aircraft over the United States before his application for a radio operator's license will be considered. If a thorough and complete investigation is desirable, in our opinion it should take place before a pilot's license is issued and not later when the alien pilot applies for a radio operator's license as a safety aid. If such a determination were to be made by the CAB, it is our feeling that an additional affirmative security determination on our part would in many cases duplicate the CAB's determination. In addition, the processing required might delay the award of a license and deprive the pilot of use of a radio during the processing period. The present statute requiring a license be issued only upon a finding that its issuance is in the public interest is sufficient to permit this Commission to deny license applications in those cases where security questions are involved, without requiring it to undertake the responsibility of making affirmative findings with respect to the security qualifications of each applicant which comes before it.

Should your committee feel that existing security provisions are inadequate, we feel that it would be more appropriate to incorporate additional safeguards in the procedures for issuing pilot certificates; and in accordance with our views as expressed above, we feel it would be unnecessary to add similar provisions to the Communications Act.

For these reasons we would be opposed to adoption of the bill in its present form. Our objections could be obviated, however, by deletion of the clause added on page 1 of the bill, lines 8 and 9, namely: "and that security considerations have been satisfied."

It may be appropriate to mention one further point, which goes to the termination of licenses issued to aliens under H. R. 8543. The bill provides that licenses may be awarded "in the case of persons *holding* United States pilot certificates, etc." (Emphasis added.) Following the award of a radio operator's license to an alien, it is possible that his pilot's certificate may expire or be revoked. Should he continue to have a radio operator's license, he could lawfully operate a radio on an airplane though not actually piloting the plane. It is our understanding of the bill, however, that the radio operator's license would remain in effect only so long as the alien was "holding" a pilot's certificate.

Attention is called to the fact that adoption of the bill in its present form would not permit issuance of a station license to a citizen of the United States representing a foreign government, whereas it does permit issuance of a station license to an alien or the representative of an alien. Section 310 (a) (2) of the Communications Act prohibits the Commission from granting a station license to "any foreign government or the representative thereof." Applications are occasionally received from honorary vice consuls and others who represent foreign governments in some capacity but who are citizens of the United States. Congress may wish to consider affording the Commission discretionary authority in this area also.

Adopted: July 21, 1958.

STATEMENT OF COMMISSIONER FREDERICK W. FORD

I am opposed to this bill in its present form. The security clearance problem would still be present under the character qualifications of an applicant. Deleting the provision on security, as proposed by the Commission, would not relieve the Commission of its basic responsibility to determine the character of an applicant, unless the bill specifically relieved the Commission of its responsibility in this regard. The problems the Commission would have of securing information on which to make such a determination would appear to be almost insurmountable.

JULY 28, 1958.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 8543) to amend the Communications Act of 1934 to authorize, in certain cases, the issuance of licenses to noncitizens for radio stations on aircraft and for the operations thereof, which passed the House June 26, 1958.

The bill would amend the Communications Act of 1934 by permitting the Federal Communications Commission to waive the requirement of United States citizenship, when found by it to be in the public interest and that security considerations have been satisfied, in the case of persons holding United States pilot certificates or in the case of those holding foreign aircraft pilot certificates valid in the United States in issuing licenses permitting radio operation on aircraft. The purpose of the legislation is to meet the situation which has been troublesome to the aviation industry because certain of their non-

citizen pilots are authorized to operate aircraft within the boundaries of the United States but are not permitted to operate radio within the aircraft.

It is difficult to predict what, if any, effect such legislation might have on the Nation's internal security. Although it does not set up any screening mechanism or safeguards it would seem that if in the future a threat to internal security appeared to be present in a particular case that the problem might be met by denial of the particular application for license as not being in the public interest or because security considerations had not been satisfied. In this connection it is noted that title 49, United States Code, section 702, provides that the Civil Aeronautics Board "shall consider requirements of national security as well as safety of flight in air commerce in exercising its powers and carrying out its responsibilities under subchapter VI of this chapter."

Whether the bill should be enacted involves questions of policy on which the Department of Justice prefers to make no recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,
Deputy Attorney General.

CIVIL AERONAUTICS BOARD,
Washington, July 11, 1958.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.*

DEAR SENATOR MAGNUSON: This is in reply to your letter of July 3, 1958, requesting the Board's comments on H. R. 8543.

Under existing provisions of the Federal Communications Act, there is no authority to issue radio-operator licenses to persons who are not citizens of the United States. On the other hand, such persons are not, by reason of their lack of citizenship, barred from obtaining authorization to operate aircraft in this country, and many aliens have been granted such authorization. They may operate anywhere in the United States aircraft in which the use of radio is not required.

However, most types of aircraft operation now require the use of two-way radio equipment. Notwithstanding the actual proficiency in radio operations which an alien may possess, he is barred from receiving a radio operator's license, and the consequence is that whatever authorization he may possess to operate aircraft in this country is substantially curtailed. From the standpoint of the Board, it is believed that the existing restriction which prohibits the Federal Communications Commission from granting a radio operator's license to an alien serves no useful purpose insofar as the operation of aircraft radio by an alien authorized to operate aircraft is concerned, and constitutes a needless inconsistency with the provisions of the law relating to the operation of aircraft by foreigners.

H. R. 8543 would remedy the situation by amending section 303 (1) of the Federal Communications Act. That section now authorizes the Federal Communications Commission to issue radio licenses "to such citizens of the United States as the Commission finds qualified."

The amendment would add: "except that in issuing licenses for the operation of radio stations on aircraft the Commission may, if it finds that the public interest will be served thereby and that security considerations have been satisfied, waive the requirement of citizenship in the case of persons holding United States pilot certificates issued by the Civil Aeronautics Administration, or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments." The Board recommends the adoption of such an amendment.

H. R. 8543 would also amend section 310 (a) of the Federal Communications Act. In addition to providing for the licensing of radio operators, the act has a separate requirement for the licensing of radio stations. Section 310 (a) as it now stands provides that a radio-station license shall not be granted to an alien or the representative of an alien. Radio equipment installed on aircraft comes within the classification of a radio station, and radio equipment installed on United States registered aircraft is licensed by the Federal Communications Commission. However, these licenses are only issued to citizens who are in possession and control of the radio equipment. Thus, in the case of a United States registered aircraft which is being operated by aliens under a lease or other legal arrangement, the operator is unable to obtain a radio-station license because of the requirement of citizenship, and the registered owner cannot secure a radio-station license because he is not in control and possession of the radio equipment. Also, the operator would probably not be able to obtain a station license from his country of nationality as the Chicago Convention, to which the United States and many other nations are parties, requires that a license to install and operate radio equipment shall be issued by the State in which the aircraft is registered.

The proposed amendment to section 310 (a) would remove the requirement of citizenship and allow aliens in control of United States registered aircraft to have radio equipment installed in the aircraft by authorizing the Federal Communications Commission to issue radio-station licenses in these cases. The Board recommends the adoption of such an amendment.

Accordingly, the Board endorses H. R. 8543.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JAMES R. DURFEE,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 14, 1958.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.*

DEAR MR. CHAIRMAN: Further reference is made to your letter dated July 3, 1958, acknowledged July 7, requesting our comments on H. R. 8543, 85th Congress, 2d session, entitled "A bill to amend the Communications Act of 1934 to authorize, in certain cases, the

issuance of licenses to noncitizens for radio stations on aircraft and for the operation thereof."

The proposed modifications of the present prohibition against issuance of radio station and radio operators licenses to aliens involve questions of national security and public safety on which we have no information other than that which has been developed in the House hearings on this bill. Under the circumstances, and since the provisions of H. R. 8543 would not affect the functions of this Office, we make no recommendations with respect to enactment of the bill.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF STATE,
Washington, July 18, 1958.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.*

DEAR SENATOR MAGNUSON: Your letter of July 3, 1958, requested the comments of this Department with respect to H. R. 8543, to amend the Communications Act of 1934 to authorize, in certain cases, the issuance of licenses to noncitizens for radio stations on aircraft and for the operation thereof.

This Department is pleased to inform you that it favors enactment of H. R. 8543.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
*Assistant Secretary
(For the Secretary of State).*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

SECTIONS 303 (1) AND 310 (a) OF THE COMMUNICATIONS ACT OF 1934

GENERAL POWERS OF THE COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) * * *

* * * * *

(1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified, *except that in issuing licenses for the operation of radio stations on aircraft the Commission may, if it finds that the public interest will*

be served thereby, waive the requirement of citizenship in the case of persons holding United States pilot certificates or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments;

* * * * *

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a) The station license required hereby shall not be granted to or held by—

- (1) Any alien or the representative of any alien;
- (2) Any foreign government or the representative thereof;
- (3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

Notwithstanding paragraph (1) of this subsection, a license for a radio station on an aircraft may be granted to and held by a person who is an alien or a representative of an alien if such person holds a United States pilot certificate or a foreign aircraft pilot certificate which is valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

